

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Jean Paul Lozada	Team: Squad #2	CCRB Case #: 201807747	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input checked="" type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Tuesday, 08/28/2018 8:30 PM	Location of Incident: Linden Boulevard and Fountain Avenue, the PSA 2 stationhouse, and § 87(2)(b)	Precinct: 75	18 Mo. SOL 2/28/2020	EO SOL 2/28/2020	
Date/Time CV Reported Mon, 09/10/2018 2:15 PM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Wed, 09/19/2018 11:11 AM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Witness(es)	Home Address
§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. An officer			
2. POM Phillip Correale	16904	957488	HBK RT
3. POM Colin Kogan	21160	958769	HBK RT
4. POM Nicholas Albergo	17802	954471	HBK RT
5. POM Gregory Antonelli	16131	957335	075 PCT
6. POM Sean Bauer	6919	954533	075 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POF Silda Kokomeci	17422	955020	C S O
2. POM Julio Espinal	10733	955907	C S O

Officer(s)	Allegation	Investigator Recommendation
A.POM Phillip Correale	Discourtesy: At Linden Boulevard and Fountain Avenue in Brooklyn and en route to the PSA 2 stationhouse, Police Officer Phillip Correale spoke discourteously to § 87(2)(b)	§ 87(2)(b)
B.POM Phillip Correale	Abuse: At Linden Boulevard and Fountain Avenue in Brooklyn, Police Officer Phillip Correale refused to provide his name to § 87(2)(b)	§ 87(2)(b)
C.POM Phillip Correale	Abuse: At Linden Boulevard and Fountain Avenue in Brooklyn, Police Officer Phillip Correale refused to provide his shield number to § 87(2)(b)	§ 87(2)(b)
D.POM Nicholas Albergo	Abuse: At Linden Boulevard and Fountain Avenue in Brooklyn, Police Officer Nicholas Albergo seized § 87(2)(b)'s property.	§ 87(2)(b)
E.POM Nicholas Albergo	Force: At Linden Boulevard and Fountain Avenue in Brooklyn, Police Officer Nicholas Albergo pointed his gun at § 87(2)(b)	§ 87(2)(b)

Officer(s)	Allegation	Investigator Recommendation
F.POM Nicholas Albergo	Discourtesy: En route to § 87(2)(b) Police Officer Nicholas Albergo spoke discourteously to § 87(2)(b)	
G.POM Nicholas Albergo	Abuse: At Linden Boulevard and Fountain Avenue in Brooklyn, and at the PSA 2 stationhouse, Police Officer Nicholas Albergo threatened § 87(2)(b) with the use of force.	
H.POM Nicholas Albergo	Off. Language: At Linden Boulevard and Fountain Avenue in Brooklyn, en route to the PSA 2 stationhouse, and at § 87(2)(b) Police Officer Nicholas Albergo made remarks to § 87(2)(b) based upon race.	
I.POM Nicholas Albergo	Force: At Linden Boulevard and Fountain Avenue in Brooklyn, Police Officer Nicholas Albergo used physical force against § 87(2)(b)	
J.POM Phillip Correale	Force: At Linden Boulevard and Fountain Avenue in Brooklyn, Police Officer Phillip Correale used physical force against § 87(2)(b)	
K.POM Colin Kogan	Force: At Linden Boulevard and Fountain Avenue in Brooklyn, Police Officer Colin Kogan used physical force against § 87(2)(b)	
L.POM Gregory Antonelli	Force: At Linden Boulevard and Fountain Avenue in Brooklyn, Police Officer Gregory Antonelli used physical force against § 87(2)(b)	
M.POM Sean Bauer	Force: At Linden Boulevard and Fountain Avenue in Brooklyn, Police Officer Sean Bauer used physical force against § 87(2)(b)	
N. An officer	Discourtesy: At Linden Boulevard and Fountain Avenue in Brooklyn, an officer spoke discourteously to § 87(2)(b)	
O. An officer	Force: At Linden Boulevard and Fountain Avenue in Brooklyn, an officer restricted § 87(2)(b)'s breathing.	
P. An officer	Force: At Linden Boulevard and Fountain Avenue in Brooklyn, an officer hit § 87(2)(b)'s head against the ground.	
Q.POM Nicholas Albergo	Force: At Linden Boulevard and Fountain Avenue in Brooklyn, Police Officer Nicholas Albergo used pepper spray against § 87(2)(b)	
R.POM Colin Kogan	Force: At Linden Boulevard and Fountain Avenue in Brooklyn, Police Officer Colin Kogan used pepper spray against § 87(2)(b)	
S.POM Nicholas Albergo	Force: En route to the PSA 2 stationhouse, Police Officer Nicholas Albergo tightly handcuffed § 87(2)(b)	
T.POM Nicholas Albergo	Off. Language: En route to and at the PSA 2 stationhouse, Police Officer Nicholas Albergo made remarks to § 87(2)(b) based upon the genders of § 87(2)(b) and Sergeant Alexander Bobo.	
U.POM Nicholas Albergo	Off. Language: En route to the PSA 2 stationhouse, and at § 87(2)(b) Police Officer Nicholas Albergo made remarks to § 87(2)(b) based upon religion.	
V.POM Nicholas Albergo	Abuse: Police Officer Nicholas Albergo searched § 87(2)(b)'s recording device.	
W.POM Nicholas Albergo	Abuse: Police Officer Nicholas Albergo deleted information on § 87(2)(b)'s electronic device.	

Officer(s)	Allegation	Investigator Recommendation
§ 87(4-b), § 87(2)(g)		

Case Summary

On September 10, 2018, § 87(2)(b) filed this complaint with the Internal Affairs Bureau via telephone, generating IAB Log # 2018-36041. IAB forwarded this case to the CCRB, where it was received on September 19, 2018.

On August 28, 2018, at approximately 8:30 p.m., § 87(2)(b)'s vehicle was pulled over at Linden Boulevard and Fountain Avenue in Brooklyn by Police Officer Phillip Correale, Police Officer Nicholas Albergo, and Police Officer Colin Kogan of Housing Borough Brooklyn Response Team for driving without a rear license plate. § 87(2)(b) exited the car, approached the officers' van, and showed them his license plate. Police Officer Correale placed his hand on his gun, and § 87(2)(b) asked him why he did this. Police Officer Correale allegedly told § 87(2)(b) to "shut the fuck up" and get back in his car (**Allegation A – Discourtesy: Word**, § 87(2)(g)). § 87(2)(b) complied, and he received a summons for his missing license plate. § 87(2)(b) told Police Officer Correale that he was applying to become a police officer, and Police Officer Correale allegedly replied, "I don't give a fuck about that, you're probably not going to get in anyway" (**within Allegation A**).

§ 87(2)(b) exited his car, stood in front of the police van, and took a photograph of its license plate. § 87(2)(b) then approached Police Officer Correale and asked him for his name and shield number, and Police Officer Correale allegedly rolled up his window without responding (**Allegations B and C – Abuse of Authority: Refusal to Provide Name and Refusal to Provide Shield Number**, § 87(2)(g)). The officers exited the van, asked § 87(2)(b) for his identification again, and told him that he was obstructing traffic. § 87(2)(b) ran away from the officers, encircling an entire city block before returning to his car. Police Officer Correale and Police Officer Kogan chased after § 87(2)(b) while Police Officer Albergo remained by § 87(2)(b)'s car and removed its key from the ignition (**Allegation D – Abuse of Authority: Seizure of Property**, § 87(2)(g)).

§ 87(2)(b) returned to his car and entered it. Police Officer Albergo allegedly pointed his gun towards § 87(2)(b) (**Allegation E – Force: Gun Pointed**, § 87(2)(g)) and said, "Get the fuck out the car before I blow your head off, nigger" (**Allegation F – Discourtesy: Word**, § 87(2)(g); **Allegation G – Abuse of Authority: Threat of Force, Allegation H – Offensive Language: Race**, § 87(2)(g)). Police Officer Albergo allegedly grabbed § 87(2)(b) by the front of his shirt, pulled him out of the car, and pushed him in his back, causing § 87(2)(b) to fall down to the ground (**Allegation I – Force: Physical Force**, § 87(2)(g)). § 87(2)(b) landed on his knees and forearms, and an officer pulled § 87(2)(b)'s arms behind his back, causing his chin to hit the ground. Police Officer Albergo, Police Officer Correale, and Police Officer Kogan punched and kicked § 87(2)(b) who was struck approximately ten times in 15 seconds, and Police Officer Gregory Antonelli and Police Officer Sean Bauer of the 75th Precinct assisted them in handcuffing § 87(2)(b) by grabbing his arms (**Allegations I, J, K, L, and M – Force: Physical Force**, § 87(2)(g)). During the struggle, an unidentified officer said, "Give me your fucking hands" (**Allegation N – Discourtesy: Word**, § 87(2)(g)). An officer allegedly applied pressure to § 87(2)(b)'s back with his knee, restricting his breathing (**Allegation O – Force: Restricted Breathing**, § 87(2)(g)). § 87(2)(b) complained that he could not breathe, and Police Officer Albergo allegedly replied, "Shut the fuck up, nigger. You can die for all I

care” (**within Allegations F and H**). An officer allegedly lifted § 87(2)(b)’s head by his dreadlocks and slammed it down onto the ground once or twice, resulting in broken dreadlocks and a laceration to his forehead (**Allegation P – Force: Hit Against Inanimate Object, § 87(2)(g)**). An unidentified officer allegedly said, “Mace his ass” (**within Allegation N**), and Police Officer Albergo and Police Officer Kogan pepper sprayed § 87(2)(b) (**Allegations Q and R – Force: Pepper Spray, § 87(2)(g)**). The officers handcuffed § 87(2)(b) and lifted him off the ground, and Police Officer Albergo allegedly elbowed § 87(2)(b) in his ribs (**within Allegation I**) and said, “Get the fuck in the paddy wagon” (**within Allegation F**).

As the officers drove § 87(2)(b) to the PSA 2 stationhouse, § 87(2)(b) complained that his handcuffs were too tight, and Police Officer Albergo then allegedly tightened them more (**Allegation S – Force: Handcuffs Too Tight, § 87(2)(g)**). While they were in the police van, Police Officer Albergo allegedly used the words “fuck,” “douchebag,” “asshole,” “nigger,” “bitch,” and “pussy” towards § 87(2)(b) in numerous discourteous and offensive statements (**within Allegations F and H; Allegation T – Offensive Language: Gender, § 87(2)(g)**), and both Police Officer Correale and Police Officer Albergo allegedly called § 87(2)(b) a “fucking criminal” (**within Allegations A and F**). Police Officer Albergo allegedly said the NYPD was for “[his] kind” and not for § 87(2)(b)’s kind” (**within Allegation H**), and he allegedly called § 87(2)(b) a “stupid Rastafarian” (**Allegation U – Offensive Language: Religion, § 87(2)(g)**).

At the PSA 2 stationhouse, § 87(2)(b) requested an ambulance and Police Officer Albergo allegedly replied, “Shut the fuck up, pussy. You’re a little bitch, you don’t need an ambulance” (**within Allegations F and T**). Police Officer Albergo also allegedly said, “Swing at me, you fucking pussy, go ahead, swing at me so I can fuck you up” (**within Allegations F and G**). Police Officer Albergo allegedly called § 87(2)(b) a “pussy” numerous times at the stationhouse, and also allegedly called him a “little bitch” and used the word “fuck” and other profanities copiously (**within Allegations F and T**).

An ambulance arrived and transported § 87(2)(b) to § 87(2)(b). In the ambulance, Police Officer Albergo told § 87(2)(b) to “shut the fuck up” (**within Allegation F**). Police Officer Albergo allegedly continued to make many profane and offensive statements towards § 87(2)(b) at the hospital, including calling him a “fucking ugly Rastafarian” and a “nigger,” and saying, “NYPD is not for you, it’s for our kind.” (**within Allegations F, T, and U**). § 87(2)(b) was taken back to the stationhouse, where he believed Police Officer Albergo deleted photos and edited videos of the incident that were on his phone (**Allegations V and W – Abuse of Authority: Search of Recording Device and Electronic Device Information Deletion, § 87(2)(g)**). § 87(2)(b) was charged with § 87(2)(b), in addition to the summons for his missing license plate (Board Review 20, 21).

§ 87(2)(b) provided a video he filmed on his cell phone of the officers requesting his identification a second time and of him running away; this video ends while § 87(2)(b) is running (IA #25, Board Review 01). Body-worn camera (BWC) footage from Police Officer Antonelli’s BWC was obtained on January 10, 2019 (IA #137, Board Review 03). This footage is summarized in IA #51 (Board Review 02) and IA #229 (Board Review 04). TARU footage was received, but the camera’s lens did not point towards the intersection of Linden Boulevard and Fountain Avenue.

Findings and Recommendations

Allegation (A) Discourtesy: At Linden Boulevard and Fountain Avenue in Brooklyn and en route to the PSA 2 stationhouse, Police Officer Phillip Correale spoke discourteously to

§ 87(2)(b)

Allegation (B) Abuse of Authority: At Linden Boulevard and Fountain Avenue in Brooklyn, Police Officer Phillip Correale refused to provide his name to

§ 87(2)(b)

Allegation (C) Abuse of Authority: At Linden Boulevard and Fountain Avenue in Brooklyn, Police Officer Phillip Correale refused to provide his shield number to

§ 87(2)(b)

§ 87(2)(b) provided a telephone statement on September 24, 2018 (Board Review 05) and was interviewed at the CCRB on September 28, 2018. § 87(2)(b)'s mother, § 87(2)(b) provided a telephone statement on January 14, 2019 (Board Review 06) and subsequently missed her interview appointment on January 23, 2019. FDNY EMT § 87(2)(b) provided a telephone statement on February 20, 2019 (Board Review 07) and was interviewed at the CCRB on March 6, 2019. Police Officer Kogan was interviewed on November 1, 2018. Police Officer Albergo was interviewed on November 7, 2018. Police Officer Correale was interviewed on November 15, 2018. Police Officer Silda Kokomeci and Police Officer Julio Espinal of the Citywide Operations Bureau (formerly of Housing Borough Brooklyn Response Team) were interviewed on December 18, 2018 and January 14, 2019, respectively. Police Officer Bauer was interviewed on April 17, 2019. Police Officer Antonelli was interviewed on April 24, 2019.

§ 87(2)(b) stated that he knew the officers pulled him over for not having a license plate affixed to the rear of his vehicle, so he exited his car, approached the officers' van, and showed them his license plate, which he was holding in his hand. Police Officer Correale placed his hand on his gun, and § 87(2)(b) asked him why he did this. Police Officer Correale allegedly told § 87(2)(b) to "shut the fuck up" and get back in his car, and § 87(2)(b) complied. After Police Officer Correale handed § 87(2)(b) the summons for his missing plate, § 87(2)(b) told Police Officer Correale that he was applying to become a police officer, and Police Officer Correale allegedly replied, "I don't give a fuck about that, you're probably not going to get in anyway." Police Officer Correale returned to the van. § 87(2)(b) exited his car, approached the police van, and asked Police Officer Correale for his name and shield number, and Police Officer Correale allegedly rolled up his window without responding. Later in the incident, while en route to the PSA 2 stationhouse, Police Officer Correale allegedly called § 87(2)(b) a "fucking criminal."

Police Officer Correale stated that after he served § 87(2)(b) the summons, § 87(2)(b) approached his window and asked him for his name and shield number, which he provided verbally approximately three times. He denied rolling up his window without responding to § 87(2)(b)'s request for his name and shield number. Police Officer Correale acknowledged that his hand was on his gun and recalled § 87(2)(b) noticing this, but he denied telling § 87(2)(b) to "shut the fuck up" when § 87(2)(b) pointed this out. Police Officer Correale recalled § 87(2)(b) saying that he was in the process of trying to join the NYPD, but he denied saying, "I don't give a fuck about that, you're probably not going to get in anyway." Police Officer Correale also denied calling § 87(2)(b) a "fucking criminal."

Police Officer Albergo's and Police Officer Kogan's statements were generally consistent with Police Officer Correale's with respect to the profanities Police Officer Correale allegedly used towards § 87(2)(b). Neither Police Officer Albergo nor Police Officer Kogan recalled whether § 87(2)(b) asked Police Officer Correale for his name or shield number.

Police Officer Bauer and Police Officer Antonelli were not yet present at the scene when these allegations allegedly took place, and neither was in the van that transported § 87(2)(b) to the PSA 2 stationhouse.

§ 87(2)(g)

Allegation (D) Abuse of Authority: At Linden Boulevard and Fountain Avenue in Brooklyn, Police Officer Nicholas Albergo seized § 87(2)(b)'s property.

Allegation (I) Force: At Linden Boulevard and Fountain Avenue in Brooklyn, Police Officer Nicholas Albergo used physical force against § 87(2)(b).

Allegation (J) Force: At Linden Boulevard and Fountain Avenue in Brooklyn, Police Officer Phillip Correale used physical force against § 87(2)(b).

Allegation (K) Force: At Linden Boulevard and Fountain Avenue in Brooklyn, Police Officer Colin Kogan used physical force against § 87(2)(b).

Allegation (L) Force: At Linden Boulevard and Fountain Avenue in Brooklyn, Police Officer Gregory Antonelli used physical force against § 87(2)(b).

Allegation (M) Force: At Linden Boulevard and Fountain Avenue in Brooklyn, Police Officer Sean Bauer used physical force against § 87(2)(b).

Allegation (N) Discourtesy: At Linden Boulevard and Fountain Avenue in Brooklyn, an officer spoke discourteously to § 87(2)(b).

Allegation (O) Force: At Linden Boulevard and Fountain Avenue in Brooklyn, an officer restricted § 87(2)(b)'s breathing.

Allegation (P) Force: At Linden Boulevard and Fountain Avenue in Brooklyn, an officer hit § 87(2)(b)'s head against the ground.

Allegation (Q) Force: At Linden Boulevard and Fountain Avenue in Brooklyn, Police Officer Nicholas Albergo used pepper spray against § 87(2)(b).

Allegation (R) Force: At Linden Boulevard and Fountain Avenue in Brooklyn, Police Officer Colin Kogan used pepper spray against § 87(2)(b).

§ 87(2)(b) stated that after Police Officer Correale handed him the summons, he exited his car, approached the police van, stood in front of it, and took a photograph of its license plate. § 87(2)(b) then attempted to take a photograph of Police Officer Correale's shield and nameplate, at which point Police Officer Correale exited the van and asked § 87(2)(b) for his identification. § 87(2)(b) then ran away from the officers, encircling an entire city block before returning to his car. Police Officer Correale and Police Officer Kogan chased after § 87(2)(b) while Police Officer Albergo remained by § 87(2)(b)'s car and the police van. § 87(2)(b) entered his car and discovered that his car key was no longer in the car, and he believed an officer removed it from the car.

Police Officer Albergo grabbed § 87(2)(b) by the front of his shirt, pulled him out of the car, and brought him to the rear of the police van. Police Officer Albergo then pushed § 87(2)(b) in his back, causing him to fall to the ground. § 87(2)(b) broke his fall with his elbows and forearms, resulting in abrasions. The officers then pulled § 87(2)(b)'s hands behind his back, causing his chin to hit the ground. § 87(2)(b) stated that he did not offer any physical resistance after he stopped running. While he was on the ground, the officers punched and kicked § 87(2)(b) approximately ten times in his ribs, shoulder, and head. § 87(2)(b) stated that while he was face-down on the ground and the officers attempted to handcuff him, and officer applied pressure to his back with his knee, restricting his breathing. An officer allegedly grabbed § 87(2)(b)'s dreadlocks, lifted it off the ground, and slammed it back down onto the ground once or twice, resulting in broken dreadlocks, a laceration to the right corner of his forehead, and a headache. § 87(2)(b) was not sure which officer(s) applied pressure to his back or slammed his head onto the pavement because he was face-down on the ground. § 87(2)(b) was not sure which officer(s) took these actions because he was face-down against the ground. An officer whom § 87(2)(b) believed to be Police Officer Correale pepper sprayed § 87(2)(b) in his face, hair, and back continuously for approximately seven to ten seconds. § 87(2)(b) stated that he did move or tense his body while he was on the ground, and he denied offering any physical resistance after he stopped running, but he noted that he moved his head to avoid the pepper spray. After § 87(2)(b) was on the ground for approximately 15 seconds, the officers handcuffed him and lifted him off of the ground. Police Officer Albergo then elbowed § 87(2)(b) twice in his ribs and ordered him to get in the police van. § 87(2)(b) was not moving his body at this moment. § 87(2)(b) stated that he sustained an abrasion to the right side of his forehead, bruises to his elbows and knees, lacerations to his lip, wrists, and ankles, and bruised ribs.

According to § 87(2)(b)'s Ambulance Call Report (Privileged Document 01), § 87(2)(b) complained of pain to his ribs on his right side, and he was given water to treat the effect of the pepper spray to his eyes. According to § 87(2)(b)'s medical records from § 87(2)(b), § 87(2)(b) continued to complain of pain to his ribs on his right side, as well as to the right side of his face. A CT scan of § 87(2)(b)'s head and brain found no facial fractures or other trauma. A chest x-ray was ordered because § 87(2)(b) exhibited "abnormal breath sounds," but the x-ray found no other injuries or abnormalities (Privileged Document 02). On August 31, 2018, after he was released from police custody, § 87(2)(b) sought additional treatment at § 87(2)(b), where he complained of severe pain to his right shoulder, chest, ribs, back, and head, and a tingling sensation in his right arm. According to these medical records (Privileged Document 03), no evidence of any fracture was found, and § 87(2)(b) was diagnosed with musculoskeletal pain and prescribed ibuprofen. IAB sent the CCRB photographs of healing abrasions and lacerations to § 87(2)(b)'s elbows, forehead, and right ankle, and bruises to his right side (Board Review 08).

Police Officer Albergo stated that § 87(2)(b) stood in front of the van for more than one minute while shouting and "being very belligerent and disorderly," but he could not hear what § 87(2)(b) said. The officers exited their van intending to arrest § 87(2)(b) for disorderly conduct. Immediately thereafter, § 87(2)(b) ran away. § 87(2)(b) was "a prisoner" and "under arrest" at this point, and it was thus Police Officer Albergo's duty to make sure that § 87(2)(b)'s property was safeguarded and not stolen. As soon as § 87(2)(b) ran away, Police Officer Albergo removed § 87(2)(b)'s key from his ignition. Police Officer Albergo did not recall whether § 87(2)(b) entered his vehicle

when he returned to Linden Boulevard. When § 87(2)(b) returned, he “ran into” Police Officer Albergo “kind of like a linebacker.” § 87(2)(b)’s shoulder made impact with Police Officer Albergo’s chest. Police Officer Albergo grabbed § 87(2)(b)’s arm and attempted to spin him around. § 87(2)(b) “flailed” his arms by moving them everywhere except behind his back. § 87(2)(b) and the officers wound up on the ground, but Police Officer Albergo did not recall whether § 87(2)(b) was forcibly brought down to the ground, nor did he recall whether he wound up on the ground as well. Police Officer Albergo’s Threat, Resistance and Injury (TRI) Worksheet (Board Review 09) indicates that he used a forcible takedown against § 87(2)(b). Police Officer Albergo explained that he “wrestled” § 87(2)(b) to the ground by “grappling” his midsection, and the momentum of this grappling caused § 87(2)(b) to lose balance and fall to the ground. Police Officer Albergo did not recall whether he pushed § 87(2)(b) down to the ground, and he did not see any other officer do so. § 87(2)(b) tried to stand up, but he was not successful. Police Officer Albergo stated that he used a hand strike against § 87(2)(b) but he did not recall where on § 87(2)(b)’s body he struck him, or how many times he used a hand strike against § 87(2)(b) because it was “all a big blur.” Although Police Officer Albergo’s TRI Worksheet indicates that he used a foot strike against § 87(2)(b) he did not recall using any such foot strike. Police Officer Albergo denied saying or hearing any other officer say, “Mace his ass.” Police Officer Albergo pepper sprayed § 87(2)(b) in his face, and he denied pepper spraying § 87(2)(b) elsewhere on his body. Police Officer Albergo denied elbowing § 87(2)(b) after he was handcuffed. Police Officer Albergo denied applying pressure to § 87(2)(b)’s back, lifting his head by his dreadlocks and slamming it onto the ground, or knowing of any officer taking either of these actions.

Police Officer Correale stated that he called for backup as soon as § 87(2)(b) ran away. When § 87(2)(b) returned to his car after running away, § 87(2)(b) and Police Officer Albergo made “some kind of contact,” but Police Officer Correale was unable to elaborate. Police Officer Albergo and § 87(2)(b) began to “wrestle” or “tussle”, and they both fell down to the ground, but Police Officer Correale did not know how they made contact with each other, or how they went from standing to being on the ground. § 87(2)(b) was in a “push-up position” and tried to push himself off of the ground and push the officers away from him. Police Officer Correale stated that he, Police Officer Kogan, and Police Officer Albergo tried to get § 87(2)(b) to remain flat on the ground by pulling his arms behind his back, and they successfully pulled his arms out from underneath his body. The officers told § 87(2)(b) several times to put his hands behind his back, and he refused to comply. Police Officer Correale stated that neither he nor any other officer said, “Mace his ass.” Police Officer Albergo and Police Officer Kogan pepper sprayed § 87(2)(b) but the pepper spray was ineffective in overcoming § 87(2)(b)’s resistance. After § 87(2)(b) was pepper sprayed, Police Officer Correale kicked § 87(2)(b) once in his right side, but the officers continued to struggle to handcuff § 87(2)(b) so Police Officer Correale kicked him in his right side once more. Police Officer Correale then moved away from the altercation because he had been blinded by the pepper spray, and he did not know what the other officers did to subdue § 87(2)(b). On the TRI Worksheet he prepared, Police Officer Correale indicated that he used a hand strike against § 87(2)(b). Police Officer Correale stated that at the time he prepared this report, he did not recall whether or not he used a hand strike against § 87(2)(b) and that he marked that he used a hand strike in case he did indeed use one. Police Officer Correale did not recall whether any other officer used a hand strike against § 87(2)(b) but he said, “I’m sure somebody did in that pile. I don’t know, but there were several cops around.” Police Officer Correale stated that no officer elbowed § 87(2)(b) after he was handcuffed. Police Officer Correale denied applying pressure to

§ 87(2)(b)'s back, lifting his head by his dreadlocks and slamming it onto the ground, or knowing of any officer taking either of these actions.

Police Officer Kogan stated that when § 87(2)(b) returned to his car after running away, he saw § 87(2)(b) throw a punch at Police Officer Albergo and miss. Police Officer Albergo grabbed § 87(2)(b)'s left shoulder and used § 87(2)(b)'s momentum to bring him down to the ground. The officers issued several commands to § 87(2)(b) to stop resisting and put his hands behind his back. When asked how § 87(2)(b) was resisting, Police Officer Kogan said, "There was a struggle on the floor," and he was unable to provide additional details. § 87(2)(b) was in a "push-up position" with his palms on the ground and his chest approximately two inches above the ground. Police Officer Kogan stated that neither he nor any other officer said, "Mace his ass." Police Officer Kogan drew his pepper spray and sprayed § 87(2)(b)'s face. Police Officer Kogan did not recall how many seconds he deployed his pepper spray for, and he did not believe he use more than one burst of pepper spray. The pepper spray was ineffective in overcoming § 87(2)(b)'s resistance. Police Officer Kogan delivered "a couple of" closed-fist hand strikes to § 87(2)(b)'s shoulder and head (by his right ear) because § 87(2)(b) was "moving around." Police Officer Kogan denied making physical contact with § 87(2)(b) aside from these hand strikes. He did not recall how many hand strikes he used, and he did not believe he hit § 87(2)(b) anywhere else. Police Officer Kogan did not see any other officer use a hand strike against § 87(2)(b). Police Officer Kogan stated that no officer used any physical force against § 87(2)(b) after he was handcuffed. Police Officer Kogan prepared a property voucher for § 87(2)(b)'s vehicle for safekeeping (Board Review 10). Police Officer Kogan denied applying pressure to § 87(2)(b)'s back, lifting his head by his dreadlocks and slamming it onto the ground, or knowing of any officer taking either of these actions.

As evidenced by Police Officer Antonelli's body-worn camera footage (Board Review 03, 04, IA #137), when he and Police Officer Bauer arrived at the scene, § 87(2)(b) was already on the ground and surrounded by Police Officer Albergo, Police Officer Correale, and Police Officer Kogan. § 87(2)(b) is screaming, "Help!" and an unidentified male officer says, "Give me your fucking hands!" Numerous hands are seen on § 87(2)(b)'s back, but this video does not capture any officer punching, kicking, or pepper spraying § 87(2)(b). At runtime 00:41, the video goes dark, and at runtime 00:45, the video ends abruptly.

Police Officer Bauer stated that when he arrived at the scene, § 87(2)(b) was already on the ground and waving his arms around. Police Officer Bauer tried to grab § 87(2)(b)'s left arm. He did not recall what Police Officer Antonelli or the other officers did to gain control of § 87(2)(b) but he believed they tried to grab his right arm. Neither Police Officer Bauer nor any other officer said, "Mace his ass," and Police Officer Bauer denied saying, "Give me your fucking hands." Once of the officers attempted to pepper spray § 87(2)(b) but instead pepper sprayed Police Officer Bauer and Police Officer Antonelli. Police Officer Bauer and Police Officer Antonelli were unable to see, so they stepped away from § 87(2)(b) and the other officers. Police Officer Bauer denied punching or kicking § 87(2)(b) or knowing of any other officer doing so. Police Officer Bauer denied applying pressure to § 87(2)(b)'s back, lifting his head by his dreadlocks and slamming it onto the ground, or knowing of any officer taking either of these actions. Police Officer Bauer did not know of any officer elbowing § 87(2)(b) after he was handcuffed.

Police Officer Antonelli initially stated that he saw § 87(2)(b) being taken down to the ground, but after he viewed his body-worn camera video, he stated that § 87(2)(b) was on the ground when he arrived. Police Officer Antonelli believed he bent over to assist the other officers in apprehending § 87(2)(b) and he stated that he made no contact with § 87(2)(b) aside from grabbing and unsuccessfully gaining control of his arms. Police Officer Antonelli said the moment he was pepper sprayed was not captured in this video. Neither Police Officer Antonelli nor any other officer said, “Mace his ass.” Police Officer Antonelli did not recall whether he was the officer who said, “Give me your fucking hands,” and he did not know which officer said this. Police Officer Antonelli denied punching or kicking § 87(2)(b) and he had no knowledge of any other officer doing so. Police Officer Antonelli denied applying pressure to § 87(2)(b)’s back, lifting his head by his dreadlocks and slamming it onto the ground, or knowing of any officer taking either of these actions.

Police Officer Kokomeci and Police Officer Espinal responded to Linden Boulevard and Fountain Avenue in response to Police Officer Correale’s call for assistance. Police Officer Espinal had no memory of what took place at Linden Boulevard and Fountain Avenue. Police Officer Kokomeci stated that she did not witness any physical struggle at Linden Boulevard and Fountain Avenue, and she did not know whether any officer said, “Mace his ass.” Police Officer Kokomeci had no knowledge of any of the force that was allegedly used against § 87(2)(b).

According to Patrol Guide Procedure 208-03, when an arrest is effected, an officer must “have [the arrestee’s] vehicle or other conveyance not required as evidence safeguarded, if appropriate.” (Board Review 11).

Patrol Guide Procedure 221-01 states, “Force may be used... when it is reasonable to place a person in custody or to prevent escape from custody. In all circumstances, any application or use of force must be reasonable under the circumstances. ... In determining whether the use of force is reasonable, members of the service should consider... whether the subject is actively resisting custody [and] whether the subject is attempting to evade arrest by flight.” (Board Review 11)

Patrol Guide Procedure 221-07 states. “O.C. pepper spray may be used to gain or maintain control of persons who are actively resisting arrest or lawful custody or exhibiting active aggression, or to prevent individuals from physically injuring themselves, members of service, or other persons. O.C. pepper spray may be used in arrest or custodial restraint situations where physical presence and/or verbal commands have not been, or would not be, effective in overcoming physical resistance.” (Board Review 11)

According to Patrol Guide Procedure 200-02, the NYPD is committed to “treating every citizen with compassion, courtesy, professionalism, and respect.” Officers may use profanities “in the context of a dynamic situation over which [he or she is] attempting to gain control,” but many not do so when it “[serves] no legitimate purpose but to belittle” a civilian (PD v. Pichardo, DAO DCT Case Number 2015-15012) (Board Review 11).

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

It is undisputed that § 87(2)(b) disobeyed the officers' orders for him to produce his identification and instead ran away, engaging the officers in a foot pursuit that encircled an entire city block before returning to his car. It is also undisputed that the officers used pepper spray, hand strikes, and foot strikes against § 87(2)(b). What remains in dispute is the scale of § 87(2)(b)'s resistance while he was on the ground, and whether an officer intentionally struck § 87(2)(b)'s head against the ground and restricted his breathing. § 87(2)(b) stated that he did not move his body aside from his head to avoid being pepper sprayed, and that he did not offer any physical resistance while he was on the ground. The officers stated that § 87(2)(b) was in a "push-up position" and attempted to push himself off of the ground, and that he waved his arms around and refused to put them behind his back. § 87(2)(g)

It is undisputed that § 87(2)(b) engaged the officers in a foot pursuit that encircled an entire city block, and that the officers physically struggled with him on the ground for some time before they handcuffed him. § 87(2)(g)

Allegation (E) Force: At Linden Boulevard and Fountain Avenue in Brooklyn, Police Officer Nicholas Albergo pointed his gun at § 87(2)(b)

Allegation (F) Discourtesy: En route to § 87(2)(b) Police Officer Nicholas Albergo spoke discourteously to § 87(2)(b)

Allegation (G) Abuse of Authority: At Linden Boulevard and Fountain Avenue in Brooklyn, and at the PSA 2 stationhouse, Police Officer Nicholas Albergo threatened § 87(2)(b) with the use of force.

Allegation (H) Offensive Language: At Linden Boulevard and Fountain Avenue in Brooklyn, en route to the PSA 2 stationhouse, and at § 87(2)(b) Police Officer Nicholas Albergo made remarks to § 87(2)(b) based upon race.

Allegation (T) Offensive Language: En route to and at the PSA 2 stationhouse, Police Officer Nicholas Albergo made remarks to § 87(2)(b) based upon the genders of § 87(2)(b) and Sergeant Alexander Bobo.

Allegation (U) Offensive Language: En route to the PSA 2 stationhouse, and at § 87(2)(b) Police Officer Nicholas Albergo made remarks to § 87(2)(b) based upon religion.

§ 87(2)(b) stated that when he returned to and entered his car after running from the officers, Police Officer Albergo pointed his gun towards his face and said, "Get the fuck out the car before I blow your head off, nigger." While the officers attempted to apprehend § 87(2)(b) on the ground, § 87(2)(b) complained that he could not breathe, and Police Officer Albergo allegedly replied, "Shut the fuck up, nigger. You can die for all I care." After § 87(2)(b) was handcuffed, Police Officer Albergo allegedly told him to "get the fuck in the paddy wagon."

While the officers drove § 87(2)(b) to the PSA 2 stationhouse, § 87(2)(b) complained that his handcuffs were too tight, and Police Officer Albergo then allegedly tightened them more. While they were the police van, Police Officer Albergo allegedly used the words "fuck," "douchebag," "asshole," "nigger," "bitch," and "pussy" towards § 87(2)(b) in numerous discourteous and offensive statements. Police Officer Albergo allegedly said the NYPD was for "[his] kind" and not for § 87(2)(b)s] kind," and he allegedly called § 87(2)(b) a "stupid Rastafarian." § 87(2)(b) said he knew Sergeant Alexander Bobo, formerly of the 75th Precinct, and Police Officer Albergo allegedly called Sergeant Bobo a "fucking pussy."

At the PSA 2 stationhouse, § 87(2)(b) requested an ambulance and Police Officer Albergo allegedly replied, "Shut the fuck up, pussy. You're a little bitch, you don't need an ambulance." Police Officer Albergo also allegedly said, "Swing at me, you fucking pussy, Go ahead, swing at me so I can fuck you up." Police Officer Albergo allegedly called § 87(2)(b) a "pussy" numerous times at the stationhouse, and also allegedly called him a "little bitch" and used the word "fuck" and other profanities copiously.

Police Officer Albergo escorted § 87(2)(b) to § 87(2)(b) in an ambulance. While en route to the hospital, Police Officer Albergo called his significant other on his cell phone and said § 87(2)(b) had attacked him. § 87(2)(b) asked Police Officer Albergo why he was lying, and Police Officer Albergo replied, "Shut the fuck up." Police Officer Albergo allegedly continued to make many profane and offensive statements towards § 87(2)(b) at the hospital,

including calling him a "fucking ugly Rastafarian" and a "nigger," and saying, "NYPD is not for you, it's for our kind." A full account of Police Officer Albergo's many alleged discourteous and offensive remarks can be found § 87(2)(b)'s interview report and the transcription of his telephone statement (Board Review 05).

§ 87(2)(b) rode in the back of the ambulance with § 87(2)(b) and Police Officer Albergo. § 87(2)(b) stated that § 87(2)(b) was very upset and used profanities towards him and Police Officer Albergo in the ambulance, and that § 87(2)(b) and Police Officer Albergo "didn't like each other" and were verbally "going at each other." § 87(2)(b) stated that Police Officer Albergo told § 87(2)(b) to "shut the fuck up," but he did not recall Police Officer Albergo making any other discourteous or offensive statements towards § 87(2)(b). § 87(2)(b) did not know what statement § 87(2)(b) made that prompted Police Officer Albergo to say, "Shut the fuck up," but he noted that Police Officer Albergo spoke to his significant other on his cell phone while they were together in the ambulance. § 87(2)(b) was "100 percent" certain that Police Officer Albergo said, "Shut the fuck up." § 87(2)(b) did not recall § 87(2)(b) attempting to kick, strike, or spit at him or Police Officer Albergo. § 87(2)(b) did not allow § 87(2)(b) to check his blood pressure or treat his scrapes, but he allowed § 87(2)(b) to give him oxygen and water.

§ 87(2)(b) stated that she received a call from an unidentified male civilian at § 87(2)(b) § 87(2)(b) who told her that § 87(2)(b) was at the hospital in police custody. § 87(2)(b) stated that he shouted § 87(2)(b)'s telephone number and asked someone to call her for him.) As she entered the emergency room, § 87(2)(b) heard Police Officer Albergo say, "Shut the fuck up, I don't care if it's your mother. You ain't nothing, you're a piece of shit." § 87(2)(b) also heard him tell § 87(2)(b) that "people of § 87(2)(b)'s kind" do not need to be police officers.

§ 87(2)(b)'s cell phone records were subpoenaed and received from T-Mobile (Board Review 12). Calls were made to each telephone number § 87(2)(b) received an incoming call from between 9:25 p.m., when § 87(2)(b) and Police Officer Albergo arrived at the hospital (Board Review 13), and 12:30 a.m., when § 87(2)(b) left the hospital when Police Officer Espinal (Board Review 14). None of the individuals who responded acknowledged being at § 87(2)(b) on the date of the incident. The civilian witness from the hospital therefore remains unidentified.

Police Officer Albergo did not recall drawing his gun at any point, and he denied pointing his gun towards § 87(2)(b). Police Officer Albergo denied saying "Get the fuck out the car before I blow your head off, nigger" and otherwise threatening to blow § 87(2)(b)'s head off. Police Officer Albergo did not recall § 87(2)(b) complaining of his handcuffs being too tight, and he denied tightening § 87(2)(b)'s handcuffs after § 87(2)(b) complained of such. Police Officer Albergo either denied or had no memory of making any of the discourteous and offensive statements alleged by § 87(2)(b). Police Officer Albergo made no mention of having a verbal dispute with § 87(2)(b) in the ambulance, or of § 87(2)(b) using profanities towards him or § 87(2)(b) in the ambulance.. Police Officer Correale's, Police Officer Kogan's, Police Officer Antonelli's, and Police Officer Bauer's statements were generally consistent with Police Officer Albergo's with respect to these allegations.

Police Officer Kokomeci and Police Officer Espinal responded to Linden Boulevard and Fountain Avenue in response to Police Officer Correale's call for assistance, and they also relieved Police

Officer Albergo at § 87(2)(b) before they took § 87(2)(b) back to the PSA 2 stationhouse. Police Officer Espinal had no memory of what took place at Linden Boulevard and Fountain Avenue or at the hospital. Police Officer Kokomeci stated that when she and Police Officer Espinal arrived at Linden Boulevard and Fountain Avenue, § 87(2)(b) had already been placed under arrest, and she did not see anything that took place in the police van. Police Officer Kokomeci did not hear Police Officer Albergo make any of the discourteous or offensive remarks alleged by § 87(2)(b).

None of the aforementioned discourteous or offensive remarks were captured in any of the videos obtained by this investigation.

According to Patrol Guide Procedure 200-02 (Board Review 11), the NYPD is committed to “treating every citizen with compassion, courtesy, professionalism, and respect.” Officers may use profanities “in the context of a dynamic situation over which [he or she is] attempting to gain control,” but many not do so when it “[serves] no legitimate purpose but to belittle” a civilian (PD v. Pichardo, DAO DCT Case Number 2015-15012, Board Review 11). According to Patrol Guide Procedure 203-10 (Board Review 11), officers are prohibited from “using discourteous or disrespectful remarks regarding another person’s ethnicity, race, religion, gender, gender identity/expression, sexual orientation, or disability.”

§ 87(2)(g)

§ 87(2)(g)

Allegation (V) Abuse of Authority: At the PSA 2 stationhouse, Police Officer Nicholas Albergo searched § 87(2)(b) s recording device.

Allegation (W) Abuse of Authority: At the PSA 2 stationhouse, Police Officer Nicholas Albergo deleted information on § 87(2)(b) s electronic device.

While § 87(2)(b) was in a cell at the PSA 2 stationhouse after returning from the hospital, Police Officer Albergo allegedly told him that § 87(2)(b) was at the stationhouse and wanted his cell phone passcode. § 87(2)(b) gave the code to Police Officer Albergo, but he later learned from § 87(2)(b) that she did not request his passcode. § 87(2)(b) believed an officer deleted a photograph of

Police Officer Correale's shield and shortened the video of the incident that were on his cell phone.

§ 87(2)(b) stated that she had no discussion of § 87(2)(b)'s cell phone with any officer while she was at the PSA 2 stationhouse, and she denied asking for § 87(2)(b)'s cell phone at the stationhouse.

Police Officer Albergo did not recall whether he was ever in possession of § 87(2)(b)'s cell phone, and he did not see § 87(2)(b)'s phone in any other officer's possession. Police Officer Albergo did not recall asking for § 87(2)(b)'s cell phone passcode, and he stated that § 87(2)(b) did not give him such a passcode. Police Officer Albergo denied attempting to manipulate any data on § 87(2)(b)'s cell phone, and he did not see anyone else do so.

Police Officer Correale stated that he was in possession of § 87(2)(b)'s cell phone in order to vouch for it. He denied accessing or manipulating any data on § 87(2)(b)'s phone, and he was unaware of any other officer doing so.

§ 87(2)(b)'s phone was vouchered as arrest evidence by Police Officer Kogan and was returned to him on September 5, 2018 (Board Review 10). Upon reviewing this document, Police Officer Kogan stated that he was in possession of § 87(2)(b)'s cell phone, but he did not recall when it first came into his possession. Police Officer Kogan denied editing or deleting any content on § 87(2)(b)'s cell phone.

§ 87(2)(g)
[REDACTED]

§ 87(4-b), § 87(2)(g)
[REDACTED]

[REDACTED]

Civilian and Officer CCRB Histories

- This is the first CCRB complaint to which § 87(2)(b) has been a party (Board Review 17).

- Police Officer Phillip Correale has been a member-of-service for four years and this is the first CCRB complaint to which he has been a subject.
- Police Officer Nicholas Albergo has been a member-of-service for six years and has been a subject in two other complaints and three other allegations, none of which were substantiated.

§ 87(2)(g)

- Police Officer Colin Kogan has been a member-of-service for four years and has been a subject in three other complaints and nine other allegations, one of which was substantiated.

§ 87(2)(g)

- Police Officer Gregory Antonelli has been a member-of-service for four years and this is the first CCRB complaint to which he has been a subject.
- Police Officer Sean Bauer has been a member-of-service for six years and this is the first CCRB complaint to which he has been a subject.

Mediation, Civil and Criminal Histories

- This complaint was not suitable for mediation.
- On July 29, 2019, a Freedom of Information Law request for any notice of claim filed by § 87(2)(b) regarding this incident was sent to the Office of the New York City Comptroller (Board Review 18). Any responsive notice of claim will be added to the case file upon receipt.
- § 87(2)(b)'s court case resulting from his arrest in this incident was adjourned in contemplation of dismissal.

§ 87(2)(b)

Squad No.: 02

Investigator: _____
Signature Print Title & Name Date

Squad Leader: _____
Signature Print Title & Name Date

Reviewer: _____
Signature Print Title & Name Date